Freedom of Information Act

(Freedom of Information Act Specialized Training)

United States Army

Overview

After completing this training session individuals should be familiar with the following:

- FOIA requests, including:
  - Who may and may not make them
  - Which records can be requested
- Receipt & Acknowledgement of FOIA requests
- FOIA Request Time Limits
- Fees & Waivers
- Administrative Appeals

What is the Freedom of Information Act?

The Freedom of Information Act is a law that establishes the public's right to request existing records from Federal Government agencies.

It is often described as the law that keeps the public in the know about their government.

For more information on the Freedom of Information Act click here

In order to receive information on the (FOIA) 5 U.S.C. 552 from the Federal Government, a valid FOIA request must be submitted.

Who can make a FOIA request?

Any person regardless of citizenship, businesses, organizations, associations, state, local or foreign governments can make a FOIA request.

Exceptions:

- A federal agency (AR 22-55 1-401)
- A fugitive from the law
- Foreign governments or international governmental organizations requesting information from intelligence agencies
- Heads of congressional committees in their capacity

Who can make a FOIA request?

Under the FOIA, agencies are not required to:

- Conduct research for requesters
- Analyze data
- Create records in response to a request
- Add explanatory materials to any records disclosed
- Render opinions or answer questions
- Provide subjective evaluations to satisfy questions from the public
- Re-create records properly disposed of
- Seek the delivery of records held by private entities

Records must exist and be in possession of the Army at the time of search to be considered subject to FOIA.

How to submit a valid FOIA Request

In order for a FOIA request to be processed, it must include the following:

- ✔ Be submitted in writing
- ✔ Comply with specific agency requirements
- ✔ Reasonably describe the specific records being sought (e.g. names, titles, dates, places, events, etc.)
- ✔ Indicate a willingness to pay fees associated with the processing of the FOIA request

There is no initial fee to make a FOIA request and in many cases no fees are charged.

However, agencies are authorized by law to recover the direct costs of providing

information to a FOIA requestor.

Where to send a FOIA request

There is no one place to send all FOIA requests in the Army. Each individual command controls its own records and can respond directly to their requests. Therefore;

- Requests may be sent via mail, email, fax, or web form where available
- Submitted to the Army activity (FOIA office) that has custody of the responsive records.

Where to send a FOIA request

If you need assistance in determining the correct Army component to address the request, contact the Army FOIA office at:

- RMDA, U.S. Army Freedom of Information Office, Casey Building, Suite 150, ATTN: AAHS-RDF, 7701 Telegraph Road, Alexandria, VA 22315-3905 or
- Via fax: Fax: (703) 428-6522 or
- Via email: usarmy.belvoir.hqda-oaa-aha.mbx.rmda-foia@mail.mil

Receipt and Acknowledgement

Receipt of request starts the clock

- Upon receipt of a FOIA request, it is logged into the Army Freedom of Information Case Tracking System (FACTS)
  - Agencies must establish a service (telephone or internet) to provide status information using assigned tracking numbers
  - Status information to be provided includes the date of receipt and an estimated completion date

Routing a request

Agencies must forward misdirected requests to the proper office

- A FOIA request is inadvertently addressed to an activity designated to receive FOIA requests
- The receiving activity has 10 working days to route the request to the proper activity.
- A 20 working-day time period begins on the date the request is first received by the appropriate component of the agency

Time limits

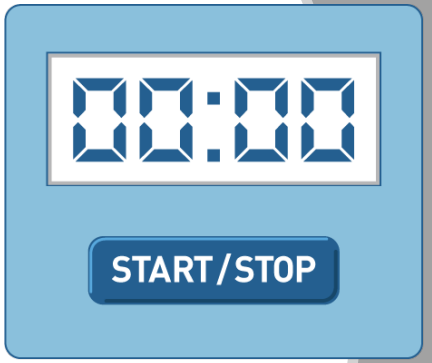
Responses to requests should occur within 20 working days

- A time limit extension may be granted for “unusual circumstances” with written notice to the requester
- If time period is extended beyond ten working days the activity must provide the requester an opportunity to modify his or her request or arrange for an alternative timeframe for completion of the agency’s processing.

Tolling time limits

The 20-day clock may be stopped for the following reasons:

- One time when the agency is waiting for general information it has reasonably requested from the requester
- As many times as necessary to clarify any issues with a requester regarding fee assessment
- The number of times an activity can toll the response time is limited.



Time limits for response

“Unusual circumstances” can be defined as:

- When records must be searched for or collected from facilities separate from the office processing the request
- When searching for/collecting/examining an especially large amount of separate and distinct records
- When consulting with another agency or amongst two or more components within the agency

Time limits

Exceptional Circumstances exist when:

- A “delay that results from a predictable workload or requests…unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.”
- In other words, exceptional circumstances exist if the agency has a backlog of pending requests and is making reasonable progress in reducing that backlog.

Limits on charging fees

The FOIA prohibits agencies from assessing:

- Search fees if the agency fails to meet the 20-day response time.
- Duplication or search fees if the requester is an educational or non-commercial, scientific institution, or representative of the news media

If unusual or exceptional circumstances apply, agencies may assess fees as normal

Expedited Processing

Expedited processing may be granted when:

- Compelling need – imminent threat to the life or physical safety of an individual
- Urgency to inform the public concerning actual/alleged Federal Government activity
- Agencies may add other grounds for granting expedited processing

Agencies have 10 calendar days to decide whether to grant or deny requests for expedition and must process these as soon as practicable

The Search

A FOIA search is a manual or automated review of agency records for the purpose of locating specifically requested records. The search will include:

- Identifying potential locations for responsive records
- Issuing search instructions
- Documenting the search
- Establishing a cut-off date for the search

Adequacy of Agency Search

The Agency's search must be "reasonably calculated to uncover all relevant documents".

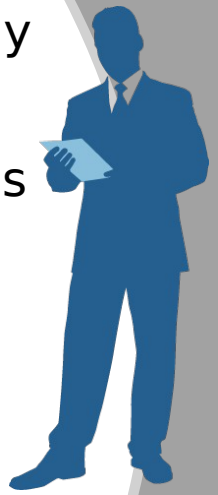
The fact that the agency did not locate all requested records does not cast doubt on an otherwise reasonable search.

Duty to search - must make reasonable efforts to search for records in electronic form unless there is significant interference with the operations of Agency's automated information system.

Reviewing the Documents

Agencies are to clearly identify the exempt information and apply the appropriate exemption beside each redaction.

Duty to reasonably segregate- “the Attorney General emphasizes Agency obligation to segregate and apply the foreseeable harm standard”



Reviewing the Documents

Referral – When records are referred to the originating agency or agency component for FOIA review and direct response to the requester

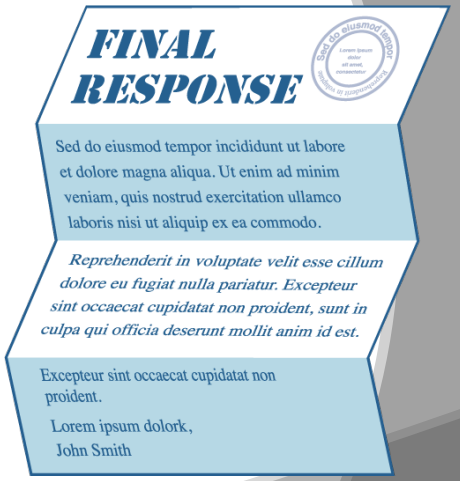
Consultation – When an Agency obtains the opinion of another Agency or Agency component before responding to the requester

Coordination – When records contains sensitive law enforcement or national security information

Final Response

Each agency is required to provide a final response letter with the following information:

- Identification of responsive records
- Volume estimate of information withheld
- Identification of exemptions asserted
- Administrative appeal rights
- Must provide records in any form requested “if readily reproducible”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Fees

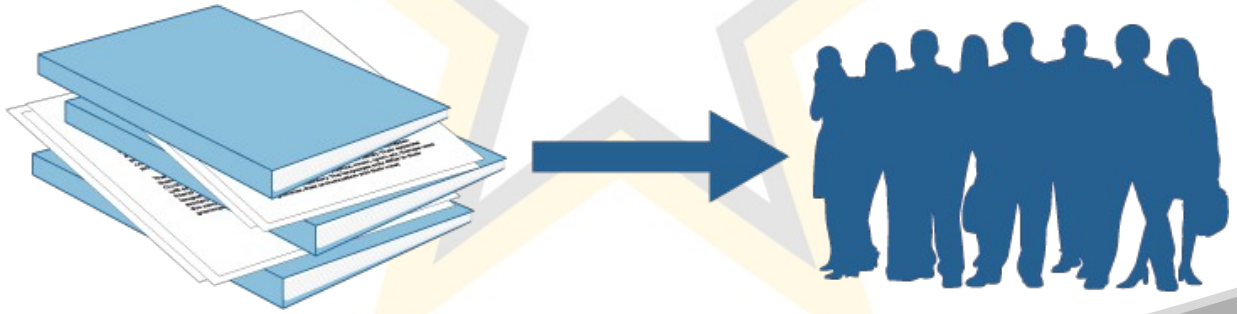
Who Pays What?			
	Search	Review	Duplication
Commercial Use	Yes	Yes	Yes
Educational or non-commercial, scientific institution, or representatives of the news media	No	No	Yes*
All Others	Yes**	No	Yes*

* Educational or non-commercial, scientific institution, or representatives of the news media and all other requesters receive the first 100 pages of duplication free of charge per request

** All Others requesters receive the first two hours of search free of charge per request

Fee waivers

The Freedom of Information Act, provides that fees should be waived or reduced if disclosure of the information “is in a public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Government and is not primarily in the commercial interest of the requester”.



Fee waivers

Guidelines for determining when FOIA fees should be waived or reduced:

1. **The subject of the request:** Whether the subject requested records concerns “the operations or activities of the government”;
2. **The informative value of the information to be disclosed:** Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
3. **The contribution to an understanding of the subject by the general public likely to result from disclosure:** Whether disclosure of the requested information will contribute to “public understanding”; and
4. **The significance of the contribution to public understanding:** Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

Fee waivers

Guidelines for determining when FOIA fees should be waived or reduced:

Disclosure of the Information “is Not primarily in the Commercial Interest of the Requester.”

5. **The existence and magnitude of a commercial interest:** Whether the requester has a commercial interest that would be furthered by the requested disclosure; and; if so
6. **The primary interest in disclosure:** Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

Administrative Appeal

Requesters may appeal an adverse determination to the designated Agency official if for example, all or part of a request is denied, or no responsive records are located

- The designated agency will be provided
- The agency's administrative appeal authority will review the initial action taken on the request and can direct that further actions be taken
- The determination on appeal must notify the requester of the right to seek judicial review
- As a matter of good administrative practice, appeal determination letters should also advise requesters of the mediation services offered by the Office of Government Information Services, located at the National Archives and Records Administration

Judicial Review

The FOIA provides requesters with the right to challenge an agency's decision in federal court.

- Agencies have the burden of proof and must demonstrate to the court that no record has been improperly withheld